

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 98-0499

Income Tax

Calendar Years 1992, 1993, 1994, & 1995

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ISSUE

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

The negligence penalty was assessed on an income tax assessment resulting from a Department audit for the calendar years 1992, 1993, 1994, & 1995.

The taxpayer manufactures magnesium oxide and related products. In Indiana, the taxpayer has a sales office with four employees, and, maintains a public warehouse. In 1992, the taxpayer had a repair facility in Indiana.

I. **Tax Administration** – Penalty.

DISCUSSION

The taxpayer argues the penalty should be waived as the error was not due to negligence and the tax returns were prepared by the former parent before the stock spin-off.

The Department points out that the tax issues are repeat issues from the previous audit. Further, the present corporation is liable for the actions of the former parent before the stock spin-off.

45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary

reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.”

The Department finds the taxpayer was inattentive to tax duties. Inattention is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

FINDING

The taxpayer’s penalty protest is denied.